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DEPARTMENT OF STATE

22 CFR Parts 120 and 126

RIN 1400-AD26

[Public Notice 8135]

**Amendment to the International Traffic in Arms Regulations:
Afghanistan and Change to Policy on Prohibited Exports**

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to list Afghanistan as a major non-NATO ally, and to make available the use of two additional defense export license exemptions for proscribed destinations.

EFFECTIVE DATE: This rule is effective [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J.

Goforth, Director, Office of Defense Trade Controls Policy, U.S.

Department of State, telephone (202) 663-2792, or e-mail

DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Afghanistan and 126.1.

SUPPLEMENTARY INFORMATION: On July 6, 2012, President Obama exercised his authority under section 517 of the Foreign Assistance Act of 1961 (FAA) to designate the Islamic Republic of Afghanistan as a major non-NATO ally (MNNA) for purposes of the FAA and the Arms Export Control Act. This final rule amends ITAR §120.32, which lists major non-NATO allies, to account for this designation. Section 126.1 is amended to except the exemptions at ITAR §§126.4 and 126.6 from the

prohibitions therein and the text is further amended to clarify the requirements therein. Additionally, §126.1(g) is amended to clarify references to United Nations Security Council resolutions.

REGULATORY ANALYSIS AND NOTICES

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department that the provisions of section 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards Afghanistan, notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest; for the same reason, the rule will be effective immediately.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions

were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated “significant regulatory actions,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 120 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120 and 126 are amended as follows:

PART 120 – PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266.

2. Section 120.32 is revised to read as follows:

§120.32 Major non-NATO ally.

Major non-NATO ally, as defined in section 644(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(q)), means a country that is designated in accordance with section 517 of the Foreign Assistance Act of

1961 (22 U.S.C. 2321(k)) as a major non-NATO ally for purposes of the Foreign Assistance Act of 1961 and the Arms Export Control Act (22 U.S.C. 2151 *et seq.* and 22 U.S.C. 2751 *et seq.*). The following countries are designated as major non-NATO allies: Afghanistan (*see* §126.1(g) of this subchapter), Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, Thailand, and Republic of Korea. Taiwan shall be treated as though it were designated a major non-NATO ally.

PART 126 – GENERAL POLICIES AND PROVISIONS

3. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Section 7045, Pub. L. 112–74; Section 7046, Pub. L. 112–74.

4. Section 126.1 is amended by revising paragraphs (a) and (g) to read as follows:

§126.1 Prohibited exports, imports, and sales to or from certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating in certain countries. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.*, Burma, China, and the Republic of the Sudan) or whenever an export would not otherwise be in furtherance of world peace

and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the *Federal Register*. The exemptions provided in this subchapter, except §§123.17, 126.4, and 126.6 of this subchapter or when the recipient is a U.S. Government department or agency, do not apply with respect to defense articles or defense services originating in or for export to any proscribed countries, areas, or persons identified in this section.

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(g) *Afghanistan*. It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Afghanistan, except that a license or other approval may be issued, on a case-by-case basis, for the Government of Afghanistan or coalition forces. In addition, the names of individuals, groups, undertakings, and entities subject to arms embargoes, due to their affiliation with the Taliban, Al-Qaida, or those associated with them, are published in lists maintained by the United Nations Security Council's Sanctions Committees (established pursuant to United Nations Security Council resolutions (UNSCR) 1267, 1988, and 1989).

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December 18, 2012
(Date)

Rose E. Gottemoeller,
Acting Under Secretary,
Arms Control and International Security,
Department of State.

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